IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.926/2005

Decided on.16.6.2007

State of H.P. and another. **…Petitioner.**

Versus

Bhadur Khan and another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.yes.*

For the petitioner : **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan & Meenakashi Sharma, Dy. Advocate Generals.**

For the respondent No.1 **Mr. R.D. Kaundal, Advocate.**

Rajiv Sharma, J. (Oral).

This petition arises out of the award dated 28th May, 2005 passed by learned Labour Court-cum-Industrial Tribunal, Dharamshala in reference No. 91/2000 (RBT No. 198/2004). The State Government has made the following reference to the Labour Court:

> **"Whether the termination of services of Bhadur Khan Ex-daily waged worker were terminated by the Executive Engineer, I&PH, Division Ghumarwin, District Bilaspur, without complying the provisions of section 25F of the Industrial Tribunal Act, is legal and valid. If no to what service benefits the petitioner is entitled to?"**

The case set out by the workman before the Labour Court as per the statement of claim was that he was engaged as Fitter by the employer

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

on 16th December, 1978 and continued in the same capacity up to 31st July, 1982 and thereafter he was retrenched and new persons, namely, Parkash Chand, Jeet Khan, Sher Singh, Chandu Ram, Beli Ram, Jagdish Ram, Amar Nath and Gian Chand were engaged. The employer has also filed reply to the statement of claim filed by the workman.

Primarily two grounds have been taken in the reply by the employer. First was with regard to the delay in raising the dispute and secondly that it was case of abandonment.

The learned Labour Court had answered the award on 28th May, 2005 in affirmative holding the workman to be entitled for his reinstatement but without back wages. The workman was also not held entitled to any consequential benefits.

Mr. M.S. Chandel, learned Advocate General has strenuously argued that the award passed by the Labour Court dated 28th May, 2005 is not sustainable in the eyes of law.

Mr. A.K. Gupta, Advocate appearing on behalf of the respondent has supported the award.

I have heard the parties and perused the record.

The learned Labour Court had come to a definite conclusion that the workman had completed 240 days preceding 12 calendar months from the date of his retrenchment i.e. with effect from November, 1981 to July, 1982. The Labour Court has also taken into consideration the earlier original application No.1197 of 1996 preferred by the workman, which was disposed by the H.P. State Administrative Tribunal on 11th September, 1996. The Labour Court has not accepted the plea of delay in view of case titled as ***Sapan Kumar Pandit Vs. U.P. State Electricity Board***, 2001 LLR 900.

Now, the question which is to be considered by this Court is: Whether the Labour Court could direct the re-instatement of the workman after a gap of 25 years or not? Taking into consideration the fact that the retrenchment of the workman was effected in the year 1982, it was proper for the Labour Court instead of grating the relief of re-engagement to allow lump sum compensation to the workman. The workman was not in service of the employer definitely after 31st July, 1982 till date. In these circumstances it will be appropriate if the petitioner is paid lump sum compensation in stead of ordering his reinstatement.

The Apex Court has held in **Rattan Singh vs. Union of India and another,** (1997)11 SCC 396 as under :

> "We find merit in the said submission of Shri Ashri. From the dates mentioned in the judgment of the first appellate court dated 22.1.1985, it appears that the appellant had continuously worked for more than 240 days in a year. Since he was a workman, he was entitled to the protection of Section 25-F of the Act and the said protection could not be denied to him on the ground that he was a daily rated worker. It is not the case of the respondents that the provisions of Section 25-F of the Act were complied with while terminating the services of the appellant. In these circumstances the termination of services of the appellant cannot be upheld and has to be set aside. The services of the appellant were terminated in the year 1976. Nearly 20 years have elapsed since then. In these circumstances, we are not inclined to direct reinstatement of the appellant. But having regard to the facts and circumstances of the case, we direct that a consolidated sum of Rs.25,000/- be paid to the appellant in lieu of compensation for back wages as well as reinstatement. This amount is being paid in full and final settlement of all the claims of the appellant. The said amount shall be paid within two months. The appeal is disposed of accordingly. No costs."

Similarly, the Apex Court has held in **Sain Steel Products v. Naipal Singh and others**, AIR 2001 SC 2401 as under:

> "Considering the fact that the respondent has not been in employment of the appellant since 1975 for well over quarter of a century we do not think it appropriate to put him back in service of the appellant. It would be proper that some reasonable compensation be paid to him in lieu of back wages and reinstatement. We think, in the circumstances of the case, appropriate relief to be granted is a sum of Rs.50,000/- which shall be paid to the respondent or deposited with the Labour Court within a period of one month from today to be drawn by the Respondent. Award made by the Labour Court as affirmed by the High Court shall stand modified in terms stated above. The appeal is accordingly allowed in part."

The Division Bench of Rajasthan in **Dal Chand and 5 others vs. Judge, Labour Court and others,** 2004-III-LLJ-38 had elaborately discussed the law when the compensation is to be paid in lieu of reinstatement. Their Lordships have held as under :

> "16. A learned single Judge (Mathur,J.) of this Court in Babu Lal v. Labour Court, Jodhpur & Ors. (S.B.Civil Writ Petition No.3987/1998) decided on March 28,2003 held that the power of Tribunal to grant relief in industrial adjudication in case of wrongful termination, dismissal or removal of the concerned employee either by way of reinstatement or compensation is discretionary. The learned single Judge while observing that no hard and fast rule can be laid down as exception to general rule still provided the following guide lines:
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> (1) The Tribunal in each case keeping in mind the objectives of the industrial adjudication in the spirit of fairness and justice confront with the question whether the circumstances of the case require that an exception should be made and compensation will meet the ends of justice.

(2) Efforts should be made to reconcile conflicting interests of the employer and the employee. The employee is entitled to protection against victimization or unfair labour practice and as such the protection of service. On the other hand an employer cannot be insisted upon to keep a workman in employment whose presence shall be prejudicial to the industrial peace and growth of the industry.

(3) A distinction must be made between termination, dismissal or removal held to be wrongful as a result of mala fide or colourable exercise of powers amounting to victimization or unfair labour practice and wrongful termination or dismissal on account of technical approach of law or violation of principle of natural justice or any other just ground. In case of former, ordinarily relief should be granted of reinstatement with full back wages. Even if compensation has to be awarded, it must be heavy so as to protect the workman from victimization by the employer. In the later case a just compensation may be awarded to meet the ends of justice.

(4) An elapse of long period since termination may be good ground for awarding compensation in lieu of reinstatement and back wages.

(5) Feasibility of reinstatement in the changed circumstances of the industry.

(6) Comparative hardship of the employer and the employee particularly with reference to financial implications.

(7) After a finding is recorded with respect to the legality of the order of termination, dismissal or removal, if the parties or either of the parties so wish should be given an opportunity to address including leading the evidence oral or documentary on the question of grant of relief by way of reinstatement or compensation in lieu of reinstatement."

17. We are in agreement with the broad guidelines provided by the learned single Judge. A discretion is vested

with the Tribunal or the Court to grant relief to the workman by way of awarding compensation in lieu of reinstatement. The vesting of such discretion with the Court of the Tribunal has been felt necessary in the interest of industrial harmony and peace. While in case of victimization the workman must be restored to his original position by way of reinstatement. However, in case the order of termination being found illegal on a technical ground or in case where the post is of trust and confidence and the employer has not entrusted him on the said post or in case whether the employee is found guilty of such activity subversive to the industry or the office or the organization or where in a case the industry is in severe or the Project has been closed down or in a case where there is a long gap from the date of termination, the discretion should normally be exercised not to compel the employer to take him in job by way of reinstatement. Bearing this in mind we proceed to deal with each case:

D.B.Civil Special Appeal No.75/2003 (Dal Chand v. Judge, Labour Court and others):

18. In the instant case the appellant was engaged as a casual labour by the Department of P.H.E.D. He worked for the period October 1,1991 to August 31,1992. The removal was found to be in violation of the provisions of Section 25-F of the Industrial Disputes Act. The tribunal following the decision of the Apex Court in Delhi Development Horticulture Employees' Union vs. Delhi Administration reported in AIR 1992 SC 789: 1992(4) SCC 99 : 1992-II-LLJ-452 directed to pay compensation in the sum of Rs.23,000/- in lieu of dismissal. He has recorded the following reasons for granting compensation in lieu of reinstatement:

(i) The workman had worked only for a brief period of 11 months.

(ii) No junior to the workman was allowed to continue in service.

(iii) The workman was engaged as a casual labour for a brief period on daily wages.

(iv) There was a gap of 8 years computing from the date of removal.

(v) At the time of removal the workman was only 18-19 years of age and even after 8 years he would be reinstated only as a causal labour on daily wages.

The learned single Judge considered the reasons given by the Labour Court just and appropriate for refusing reinstatement and awarding compensation in lieu thereof. We are of the view that the case of the appellant falls in the exceptional category referred to above. No interference is warranted with theorder of the learned single Judge confirming the order of the Labour Court.

D.B. Civil Special Appeal No.919/2002(Bhanwar Singh v. Judge Labour Court & Ors.):

19. In this case the appellant workman worked as a casual labour on daily wage basis with the Department of P.H.E.D. for the period May 1,1992 to May 31,1993. The Tribunal found violation of the provisions of Section 25-F but in lieu of dismissal a compensation was awarded in the sum of Rs.25,000/-. The Tribunal found that the project in which the appellant was engaged no more exists. There was a gap of 7-9 years. Even if he is reinstated after 8 years, he will be only engaged as a casual labour on daily rate basis. He was engaged only for a brief period of one year. The learned single Judge found that there existed good reasons for refusing the reinstatement and granting compensation in lieu thereof. No interference is warranted with the order of the learned single Judge confirming the order of the Labour Court.

D.B. Civil Special Appeal No.920/2002(Ram Lal v. Judge, Labour Court & Ors.):

22. In this case the appellant was engaged as Helper II w.e.f. January 31, 1977. He proceeded on the sanctioned leave on August 1, 1980. Thereafter he fell sick and did not join the duties. He was removed from

service vide order dated August 5, 1981. An industrial dispute was raised after 16 years. The Tribunal found the order in violation of the provisions of the I. D. Act and as such directed reinstatement by award dated March 30,2003. The learned single Judge after considering the number of decisions of the Apex Court and this Court and critically examining the facts of the case modified the order of the Labour Court by directing payment of compensation in sum of Rs.30,000/- in lieu of reinstatement. The learned single Judge found that the appellant had worked for a brief period. He raised the dispute after 16 years and long time had elapsed from the date of removal. In our view the case of the appellant falls in the exceptional category as pointed out by us in the preceding paras. No interference is warranted with the judgment of the learned single judge.

D.B.Civil Special Appeal No.121/2003 (Shyam Sunder v. Judge Labour Court & Ors.):

Accordingly the award passed by the Labour Court dated 28th May, 2005 is modified and the workman is held entitled to compensation of Rs. 40,000/- instead of re-engagement.

Consequently the writ petition is disposed of and the employer-State is directed to pay compensation of Rs. 40,000/- to the workman within a period of two months from today. There shall be no order as to costs.

(Rajiv Sharma), Judge

June 16, 2007
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